

## Federal Acquisition Regulation

23.302

### 23.205 Energy-savings performance contracts.

(a) Agencies should make maximum use of the authority provided in the National Energy Conservation Policy Act (42 U.S.C. 8287) to use an energy-savings performance contract (ESPC), when life-cycle cost-effective, to reduce energy use and cost in the agency's facilities and operations.

(b)(1) Under an ESPC, an agency can contract with an energy service company for a period not to exceed 25 years to improve energy efficiency in one or more agency facilities at no direct capital cost to the United States Treasury. The energy service company finances the capital costs of implementing energy conservation measures and receives, in return, a contractually determined share of the cost savings that result.

(2) Except as provided in 10 CFR 436.34, ESPC's are subject to subpart 17.1.

(c) To solicit and award an ESPC, the contracting officer—

(1) Must use the procedures, selection method, and terms and conditions provided in 10 CFR part 436, subpart B; at [http://www1.eere.energy.gov/femp/financing/espcs\\_regulations.html](http://www1.eere.energy.gov/femp/financing/espcs_regulations.html); and

(2) May use the "Qualified List" of energy service companies established by the Department of Energy and other agencies.

[66 FR 65352, Dec. 18, 2001. Redesignated at 72 FR 65872, Nov. 23, 2007; 76 FR 31400, May 31, 2011; 77 FR 204, Jan. 3, 2012]

### 23.206 Contract clause.

Unless exempt pursuant to 23.204, insert the clause at 52.223-15, Energy Efficiency in Energy-Consuming Products, in solicitations and contracts when energy-consuming products listed in the ENERGY STAR® Program or FEMP will be—

(a) Delivered;

(b) Acquired by the contractor for use in performing services at a Federally-controlled facility;

(c) Furnished by the contractor for use by the Government; or

(d) Specified in the design of a building or work, or incorporated during its

construction, renovation, or maintenance.

[72 FR 65872, Nov. 23, 2007]

## Subpart 23.3—Hazardous Material Identification and Material Safety Data

### 23.300 Scope of subpart.

This subpart prescribes policies and procedures for acquiring deliverable items, other than ammunition and explosives, that require the furnishing of data involving hazardous materials. Agencies may prescribe special procedures for ammunition and explosives.

### 23.301 Definition.

*Hazardous material* is defined in the latest version of Federal Standard No. 313 (Federal Standards are sold to the public and Federal agencies through: General Services Administration, Specifications Unit (3FBP-W), 7th & D Sts., SW., Washington, DC 20407.

[56 FR 55374, Oct. 25, 1991]

### 23.302 Policy.

(a) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require Government activities to apprise their employees of—

(1) All hazards to which they may be exposed;

(2) Relative symptoms and appropriate emergency treatment; and

(3) Proper conditions and precautions for safe use and exposure.

(b) To accomplish this objective, it is necessary to obtain certain information relative to the hazards which may be introduced into the workplace by the supplies being acquired. Accordingly, offerors and contractors are required to submit hazardous materials data whenever the supplies being acquired are identified as hazardous materials. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.

(c) Hazardous material data (Material Safety Data Sheets (MSDS's)) are required—

(1) As specified in the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract);

(2) For any other material designated by a Government technical representative as potentially hazardous and requiring safety controls.

(d) MSDS's must be submitted—

(1) By the apparent successful offeror prior to contract award if hazardous materials are expected to be used during contract performance.

(2) For agencies other than the Department of Defense, again by the contractor with the supplies at the time of delivery.

(e) The contracting officer shall provide a copy of all MSDS's received to the safety officer or other designated individual.

[48 FR 42275, Sept. 19, 1983, as amended at 56 FR 55374, Oct. 25, 1991; 62 FR 236, Jan. 2, 1997]

#### 23.303 Contract clause.

(a) The contracting officer shall insert the clause at 52.223–3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts if the contract will require the delivery of hazardous materials as defined in 23.301.

(b) If the contract is awarded by an agency other than the Department of Defense, the contracting officer shall use the clause at 52.223–3 with its *Alternate I*.

[56 FR 55374, Oct. 25, 1991]

### Subpart 23.4—Use of Recovered Materials and Biobased Products

SOURCE: 72 FR 63043, Nov. 7, 2007, unless otherwise noted.

#### 23.400 Scope of subpart.

(a) The procedures in this subpart apply to all agency acquisitions of an Environmental Protection Agency (EPA) or United States Department of Agriculture (USDA)-designated item, if—

(1) The price of the designated item exceeds \$10,000; or

(2) The aggregate amount paid for designated items, or for functionally equivalent designated items, in the

preceding fiscal year was \$10,000 or more.

(b) While micro-purchases are included in determining the aggregate amount paid under paragraph (a)(2) of this section, it is not recommended that an agency track micro-purchases when—

(1) The agency anticipates the aggregate amount paid will exceed \$10,000; or

(2) The agency intends to establish or continue an affirmative procurement program in the following fiscal year.

#### 23.401 Definitions.

As used in this subpart—

(a) *EPA-designated item* means a product that is or can be made with recovered material—

(1) That is listed by EPA in a procurement guideline (40 CFR part 247); and

(2) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN) (available at <http://www.epa.gov/epawaste/conservation/tools/cpg/index.htm>).

(b) *USDA-designated item* means a generic grouping of products that are or can be made with biobased materials—

(1) That is listed by USDA in a procurement guideline (7 CFR part 3201, subpart B); and

(2) For which USDA has provided purchasing recommendations.

[72 FR 63043, Nov. 7, 2007, as amended at 73 FR 21790, Apr. 22, 2008; 77 FR 204, Jan. 3, 2012; 77 FR 23367, Apr. 18, 2012]

#### 23.402 Authorities.

(a) The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962.

(b) The Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102.

(c) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

(d) The Energy Policy Act of 2005, Public Law 109–58.

(e) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

[72 FR 63043, Nov. 7, 2007, as amended at 76 FR 31400, May 31, 2011]